

Before the
Federal Communications Commission
Washington, DC

In the Matter of)
)
Amendment of Section 202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Barnwell, South Carolina and Pembroke,)
Douglas and Willacoochee, Georgia;)
Statesboro, Pulaski, East Dublin,)
Swainsboro, Twin City, Georgia)
)
To: **Assistant Division Chief**
Audio Division, Media Bureau

DOCKET FILE COPY ORIGINAL

MM Docket No. 00-18
RM-9790

RECEIVED

FEB 14 2003

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**SUPPLEMENT TO OPPOSITION TO
PETITION FOR RECONSIDERATION**

Multi-Service Corp., by its attorney, hereby submits a supplement to its “Opposition to Petition for Reconsideration,” filed on November 20, 2002 in response to the “Petition for Reconsideration” filed by Bullie Broadcasting Corporation (“Bullie”) with respect to the *Memorandum Opinion and Order*, 17 FCC Rcd 18956 (MMB Oct. 4, 2002) in this proceeding. With respect thereto, the following is stated:

Bullie’s proposed reallocation of Channel 257C1 from Barnwell to Pembroke was filed pursuant to the provisions of Section 1.420(i) of the Commission’s Rules, which permits the modification of a station’s authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in instances where a community’s sole aural service will not be removed. *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Due to the fact that the license

Nu. of Copies rec'd 014
List ABCDE

for Station WBUB(AM), Barnwell, South Carolina, has been deleted, Barnwell currently has no locally licensed service other than WBAW-FM. Therefore, were WBAW-FM, Barnwell, South Carolina immediately to change its city of license to Pembroke, Georgia, it would deprive Barnwell of any locally licensed aural service. However, even before the deletion of WBUB(AM) from Barnwell, Bullie proposed the allotment of Channel 256C3 as an FM “backfill” allotment, ostensibly eliminating that deficiency. The Bureau granted the allotment and Bullie’s change of community of license by *Report and Order*, 16 FCC Rcd 17860 (MMB 2001), but the *Report and Order* was modified on appeal to account for the fact that WBUB(AM) no longer exists, and provided that the change of communities could not occur (and WBAW-FM could not effectuate its change of community from Barnwell to Pembroke), until such time as service begins on the new “backfill” Barnwell allotment. *Memorandum Opinion and Order*, 17 FCC Rcd 18956, ¶ 4, (MMB 2002). On November 4, 2002, Bullie filed for reconsideration of that *Memorandum Opinion and Order*. The Bureau’s decisions in this proceeding therefore are on appeal, and accordingly are not final.

In its Petition for Reconsideration, Bullie argued, in part, that it is inequitable for its change of city of license to be affirmatively delayed (including the preclusion of being granted any “special temporary authority” to operate with facilities serving the new community of license) until the establishment of new service to Barnwell commences, since it is uncertain when a new broadcast auction resulting the issuance of a permit for the “backfill” frequency will occur or when the permit for any new station later will be constructed and become active.

For the very reasons cited by Bullie in its Petition, the Bureau’s decision to reallocate

Channel 257C1 from Barnwell to Pembroke no longer is viable and cannot stand. The grant of the change of community of license granted in this proceeding therefore must be reversed.

In the case of *Refugio, TX, 15 FCC Rcd 8497 (MMB 2000)*, as here, an rulemaking proponent was granted a change a city of license (with respect to Station KTKY) despite the fact it was removing the only aural service licensed to a community, due to the fact that was proposing the addition of a “backfill” allotment to the FM Table of Allotments. The Bureau granted the proposal, but ruled that the change of communities could not occur until such time as service commenced on the “backfill” allotment. *Id.* at ¶¶ 6, 9. As here, the proponent wished the ability to obtain relief from that condition, through issuance of an STA. The Bureau denied the request. The licensee of Station KTKY appealed that denial to the full Commission.

In response to the Application for Review filed by the licensee of Station KTKY appealing the denial of the request for issuance of an STA permitting immediate service to the new community of license, by *Memorandum Opinion and Order*, FCC 03-18, released February 11, 2003, the Commission ruled and announced as follows:

We ... conclude that the current staff practice of relying on vacant so-called “backfill” allotments to preserve local service as a basis for permitting community of license changes by existing stations is not tenable. Backfill allotments permit the filing of inherently contingent proposals, and create the potential for the type of problems and resource burdens that led to the codification of the Commission’s general prohibition on filing contingent applications. We believe there are insufficient benefits in the current backfill process to justify a departure from this policy determination. Moreover, as this case illustrates, the ultimate licensing of a backfill through our auction procedures is both an uncertain and time-consuming process, especially during the current hiatus in broadcast auctions. We are also extremely concerned that the backfill process could lead to intractable spectrum entanglements.

* * * *

Accordingly, we direct the Bureau immediately to cease this practice. Henceforth, a community of license modification proponent may not rely on a new “backfill” FM allotment to “preserve” a community’s sole local transmission service.

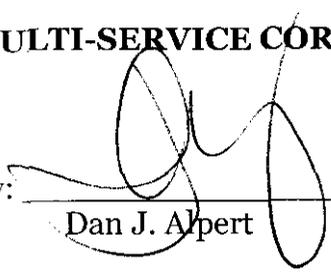
FCC 03-18, ¶¶ 14-15 (emphasis added; footnotes omitted).

Of course, it is a “backfill” allotment that is precisely what Bullie is relying upon to ostensibly “preserve” service to Barnwell. Thus, pursuant to the Commission’s new directive, the allotment granted in this proceeding must be reversed. The fact that a decision already has been issued in this proceeding is irrelevant. The proceeding is not final, and it is well established that the Commission may modify pending staff decisions as the result of any present or future changed circumstances until such time as the Commission renders a decision and that decision becomes final. 47 C.F.R. §1.429(b)(3); *Sparta and Buckhead, GA*, 16 FCC Rcd 2169, ¶ 4 (MMB 2001); *Alva, Mooreland, Tishomingo, Tuttle and Woodward, OK*, 17 FCC Rcd 14722 ¶ 4 (MMB 2002).

WHEREFORE, it is respectfully requested that the Petition for Reconsideration filed by Bullie Broadcasting Corporation be denied, and further, that the changes to the FM Table of Allotments granted by Report and Order, 16 FCC Rcd 17860 (MMB 2001), as modified by Memorandum Opinion and Order, 17 FCC Rcd 18956 (MMB 2002), granting the request of Bullie Broadcasting Corp. to change the community of license of Station WBAW from Barnwell, South Carolina to Pembroke, Georgia, be reversed.

Respectfully submitted,

MULTI-SERVICE CORP.

By: 

Dan J. Alpert

Its Attorney

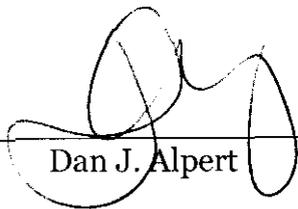
The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201

February 13, 2003

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that on February 13, 2003, the foregoing document has been sent to the following parties via First Class Mail, postage prepaid:

J. Geoffrey Bentley, P.C.
Bentley Law Office
P.O. Box 71207
Herndon, VA 20171



Dan J. Alpert